ASSIGNABILITY OF CONTRACT.

THAT in the early common law conception of contract, it was regarded as creating a strictly personal relation, and that it was therefore quite as impossible for a party to substitute another in his place — to make an assignment of his contract — as it was for him to effect any other change in its terms, is now generally recognized.[1] That the doctrine has since been greatly modified is common knowledge. But the frequent failure of courts and text-writers to appreciate and clearly define the limits of such modification, and more particularly, to discriminate carefully between transactions superficially similar but essentially different, has led to considerable confusion of thought and inconsistency of decision.

In an attempt to clarify the subject, it is necessary to observe, at the outset, that the phrase "assignment of contract" is one of no precise significance; that the same contract may be assignable in one sense of the term and not in another; and therefore that the unqualified statement that certain classes of contract are assignable and certain other classes non-assignable is inaccurate and misleading. As a matter of fact there are four transactions, widely different in character, which fall under the general designation of assignment of contract:

1. An assignment which purports to transfer only the right to the benefit of performance by the other party;

2. An assignment which purports to transfer not only the right to the benefit of performance, but the right to direct or control such performance;

3. An assignment which purports both to transfer the rights and delegate the duties of the assignor;

4. An assignment which purports to transfer the rights and delegate the duties of the assignor, and also to relieve him from the obligation of the contract.

The four classes and the cases falling under them will be considered in the order named.

I. ASSIGNMENT OF RIGHT TO BENEFIT OF PERFORMANCE. If the contract be one for the payment of money, an assignment of

[1] Pollock on Contracts (6th ed.) 204, 701; Ames, 3 HARV. L. REV. 338, 339.

the benefit of performance — the assignor having already performed the obligation on his part or intending so to do — virtually amounts to an assignment of a chose in action. The theory upon which such assignments are upheld and enforced is so familiar that it need not be stated. If the performance required by the contract be other than the payment of money — as, for instance, the rendering of services, or the sale and delivery of goods, or the forbearance to engage in a trade, an assignment of the benefit of performance, while perhaps not a virtual assignment of a chose in action, may be supported upon the same theory — that the assignee has an implied power of attorney to receive performance, and in case of failure to perform, to maintain an action for damages for his own benefit.[1] And if it be contended that the assignment of such a contract should not be permitted because it would compel the contractor to render service or deliver goods to a stranger to the contract, the obvious answer is that an assignment of a debt likewise compels the payment of money to a stranger, and that if the assignee acquire only the right to the benefit of performance, and no supervision or control of the time, manner, or place of performance, the cases are indistinguishable.

II. ASSIGNMENT OF RIGHT TO BENEFIT BY, AND RIGHT TO DIRECT OR CONTROL PERFORMANCE. Clearly here is something very different from an assignment of a mere chose in action. In this case the contractor is directed by the assignment not only to perform for the benefit of a stranger, but according to the will of a stranger; not only to pay money or deliver goods or render services to a person other than the one with whom he contracted, but to do so (within the terms of the contract) at the time or place or in the manner dictated by him. Such an assignment certainly effects a very material change in the terms of the contractor's obligation, and should be permitted only with his express or implied assent — to be looked for, of course, in the nature and terms of the contract.[2]

III. ASSIGNMENT OF RIGHTS, ACCOMPANIED BY A DELEGATION OF DUTY. This transaction, like that of the second class but to a greater degree, alters the terms of the engagement. For here a party to the contract is asked not only to perform for the benefit of a stranger, but to accept the performance of that stranger in

[1] Francisco *v.* Smith, 143 N. Y. 488; Hedge *v.* Lowe, 47 Ia. 137; Up River Ice Co. *v.* Danler, 114 Mich. 296.

[2] See Kepp *v.* Wiggett, 6 C. B. R. 290, n. (a).

lieu of that of the person with whom he contracted. Obviously the case should be governed by the same rule — that of an express or implied assent to the assignment, to be sought in the nature and terms of the contract.

(*a*) *Contracts to sell goods.* 1. Assignment by seller. If, because of the buyer's reliance upon the skill, judgment, and taste of the seller in the production, selection, or preparation of the goods, or for any other reason, the parties appear to have contemplated performance by the seller personally, an assent to the delegation of the seller's duties cannot be implied.

Such a case is Shultz & Co. *v.* Johnson's Adms.[1] One Johnson, it appears, engaged to furnish to Shultz & Co. "six successive crops of hemp of his own raising, embracing each year all the hemp he can raise upon not less than one hundred nor more than one hundred and sixty acres of land." After performing for two years, Johnson died, and Shultz & Co. refusing to accept hemp raised on the same farm by his administrators, the latter brought action for breach of covenant. It was insisted by the administrators that the only object of inserting the clause "of his own raising" was to prevent Johnson from buying a crop upon land yielding the smallest quantity to the acre in case the market price should be higher than the contract price, or a crop upon land yielding the largest quantity if the market price should be lower. But the court assumed the right to presume that the value of hemp depends upon the attention, skill, and experience in raising it, declared that the words "of his own raising" showed that the defendants relied upon Johnson's attention, skill, and experience, and held that the contract was a personal one. A case very similar in its facts but in which an opposite conclusion was reached is La Rue *v.* Groesinger,[2] holding that a contract by one Hopper to sell to defendant "all the grapes which he might raise during a period of ten years, from the vines which were then growing or which he might thereafter plant" in a certain vineyard, the grapes to be sound and to be gathered when they contained 22 per cent of saccharine matter, was so assignable, and that therefore the defendant was compelled to accept grapes from a purchaser of the vineyard. The court discusses the case of Shultz *v.* Johnson,[3] and contends that the phrase "he might raise" does not have the

[1] 5 B. Monroe (Ky.) 497.
[2] 84 Cal. 281.
[3] *Supra.*

significance of the phrase "of his own raising"; that the pronoun "he" does not import a desire for the personal service or attention of the owner, but is used merely as an equivalent to his proper name. Aside from this rather nice distinction, however, the court indicates in its opinion a view unusually favorable to the assignability of this class of contracts. "There is nothing," it says, "in the nature or circumstances of the case which shows that the skill or other personal quality of the party was a distinctive characteristic of the thing contracted for or a material inducement to the contract. . . . It is not impossible that one man might have some peculiar skill or secret by which he could raise better grapes from the same vines than other men could. But there is no evidence that there was any such peculiarity about the original owner of this vineyard and we do not think that the court will assume that there was." In other words, the presumption is in favor of assignability.

An interesting question here presents itself. Assuming that there is no reliance upon the personal performance of the seller, and that therefore he may make an assignment of the class under discussion, is the personal distastefulness of the assignee himself to the buyer of any consequence? No case has been found in which the precise point has been raised. But the opinion of the court in the much discussed case of Boston Ice Co. *v.* Potter[1] throws some light upon it. The defendant, in 1873, was supplied with ice by the plaintiff, but on account of some dissatisfaction with the manner of supply, terminated his contract with it and made a contract with the Citizens' Ice Co. to furnish him with ice. Subsequently the Citizens' Ice Co. sold its business to the plaintiff with the privilege of supplying ice to its customers; the plaintiff furnished ice to the defendant — the defendant being unaware of the assignment — and brought an action to recover the price. The action was not brought in the name of the assignor, and the right to recover was sought to be upheld, not upon the theory of an assignment to the plaintiff of the contract between defendant and the Citizens' Ice Co., but upon an implied contract between the parties to the action. Yet the court, in denying the right to recover, indicates that if the plaintiff had based its cause upon the assignment to it of the contract between the defendant and the Citizens' Ice Co., the result would have been the same. "A party

[1] 123 Mass. 28.

has a right," says the court, "to select and determine with whom he will contract, and cannot have another person thrust upon him without his consent. . . . If the defendant before receiving the ice, or during its delivery, has received notice of the change, and that the Citizens' Ice Co. could no longer perform its contract with him, it would then have been his undoubted right to have rescinded the contract and to decline to have it executed by the plaintiff." In thus failing to recognize a distinction between the case where the distasteful person claims to be the original contractor with the defendant and the case where he claims to be an assignee of a contract with the defendant, it is believed that the court is wrong. It must be conceded that to compel a buyer to accept performance from an assignee who is personally distasteful is to impose a hardship upon him; but it is perhaps no greater hardship than that which is suffered by a debtor who is forced to pay his debt to a personally distasteful assignee of his creditor. Moreover, to permit the buyer to refuse to perform on such a ground would be practically to make the contract in every case non-assignable by the seller.

2. Assignment by buyer. Correlatively, if the seller appear to have relied upon the personal performance by the buyer of the duty of payment, delegation of that duty should not be permitted.

It is in this class of cases that the greatest confusion and error are found. In the first place, the courts have drawn a line between sales for cash on delivery and sales on credit, holding that in the former the buyer may transfer his rights and duties, while in the latter he may not.[1] The distinction appears to be an arbitrary one. Certainly the seller for cash on delivery may rely in many cases upon the buyer's character for prompt payment, just as much as the seller on credit. It is true that if payment is not made he still has the goods, but in case the goods are manufactured or produced or prepared upon a special order of the buyer they may be of little value on the market.

In the second place it is submitted that upon principle, in a contract for the sale of goods, whether for cash on delivery or on credit, the buyer should be allowed to make an assignment of his right to receive the goods and to delegate his duty of paying for them — in the absence, of course, of other evidence of an

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[1] Ark. Valley Smelting Co. *v.* Belden Mining Co., 127 U. S. 379; Hardy *v.* So. Bend Iron Works, 129 Mo. 222; Lansden *v.* McCarthy, 45 Mo. 106.

intent to the contrary. There is nothing in the nature of the buyer's duty — the payment of the money — which makes its satisfactory performance dependent on his skill, taste, or judgment. The assignee of the buyer, if able and willing, can pay money as well as his assignor, just as the assignee of the seller, if able and willing, can deliver coal as well as his assignor. Moreover, the right to the benefit of the character, credit, and substance of the assignor is not lost. On the contrary the assignment is a distinct benefit to the seller, for by its operation he acquires a right of action against the assignee [1] and yet retains the liability of the assignor.[2] As it is well put in Rochester Lantern Co. *v.* Stiles & Parker Press Co.,[3] "The contract was not purely personal in the sense that Kelly was bound to perform in person, as his only obligation was to pay for the dies when delivered and that obligation could be discharged by any one. He could not, however, by the assignment, absolve himself from all obligations under the contract. The obligations of the contract still rested upon him and resort could still be made to him for the payment of the dies *in case the assignee did not pay for them when tendered to it.*"

It is a pleasure to find that the House of Lords and the New York Court of Appeals in recent cases of sales on credit have disregarded the unreasonable distinction and upheld an assignment by the buyer.[4] It must be admitted, however, that in neither case does the point appear to have been called to the attention of the court.

If by the terms of the contract it appears that the seller looks to the buyer to do more than merely to receive and pay for the goods, it may very properly be held to be non-assignable. Several of the cases of sales on credit may be supported upon this distinction. Thus, in the well known case of the Arkansas Valley Smelting Co. *v.* Belden Mining Co.,[5] the contract was for the delivery of lead ore and contained the following stipulation:

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[1] Smith *v.* Flack, 95 Ind. 116; Bach *v.* Boston, etc., Mining Co., 16 Mont. 467; Wiggins Ferry Co. *v.* C. & A. R. Co., 73 Mo. 389; Gamble *v.* Gates, 97 Mich. 461.

[2] Rochester Lantern Co. *v.* Stiles & Parker Press Co., 135 N. Y. 209; Martin *v.* Omdorff, 22 Ia. 504; Carrier *v.* Taylor, 19 N. H. 189; Crane *v.* Kildorf, 91 Ill. 567; Brassel *v.* Troxell, 68 Ill. App. 131; Liberty Wall Paper Co. *v.* Stoner Co., 59 App. Div. (N. Y.) 353.

[3] *Supra*, n. 2.

[4] Tolhurst *v.* Portland Cement Mfrs., [1903] A. C. 414; Liberty Wall Paper Co. *v.* Stoner, 170 N. Y. 582, affirming without opinion, 59 App. Div. 353.

[5] 127 U. S. 379.

"The value of said ore and the price to be paid therefor shall be fixed in lots of about one hundred tons each; that is to say, as soon as such a lot of ore shall have been delivered to said second party, it shall be sampled at the works of said second party and the sample assayed by either or both of the parties hereto, and the value of such lots of ore shall be fixed by such assay; in case the parties hereto cannot agree as to such assay, they shall agree upon some third disinterested and competent party whose assay shall be final." The buyer's duty was not merely to receive the ore and pay the price, but to make an assay for the purpose of fixing the price, and since the proper performance of that duty may be said to depend upon the integrity and skill of the buyer, it would not be unreasonable to hold that the seller anticipated personal performance by the buyer and that the buyer's duties were not transferable. As a matter of fact, the Supreme Court held that the buyer's assignment could not be supported, but rested its decision upon the less satisfactory ground that the sale was on credit.

Again, in Hardy *v.* So. Bend Iron Work Co.,[1] which is decided on the credit theory, it appeared that the defendant contracted to sell certain plows to Mason and Hardy on credit; that in the contract it was stipulated that in case Mason and Hardy desired to purchase other or further plows during the year such purchases should be made upon certain conditions as to credit and discount; that it was further stipulated in the contract that the defendant would not sell plows to any other person in the vicinity during the year. Before the time stipulated for the delivery of the plows by the defendant, Mason withdrew from the firm and assigned his interest in the contract to Hardy, whereupon and wherefor defendant refused to ship the goods. It is obvious that in this case the buyers were expected not only to receive and pay for the plows bought by them, but to endeavor to sell as many of the seller's plows as possible. It follows that there was a reliance by the seller upon the business judgment and ability of the buyers, and that such buyers could not assign their rights and duties under the contract.

The same is true of the earlier Missouri case of Lansden *v.* McCarthy.[2] The defendant agreed to furnish on credit to the plaintiff's assignors at the St. Charles Hotel all the fresh beef,

[1] 129 Mo. 222.

[2] 45 Mo. 106.

pork, and mutton that might be required at the hotel for the ensuing year at ten cents per pound. Plaintiff bought the hotel and took an assignment of the meat contract, but defendant refused to continue performance. The court held that the assignment could not be supported, because of the stipulation for credit. The decision might have been rested, however, upon the ground that the seller's agreement to sell at the price mentioned may have been induced by the expectation that the hotel would thrive and that large quantities of meat would be required and ordered. Such expectation would obviously denote a reliance upon the personal judgment and skill of the buyer in the management of the hotel, and would render the contract non-assignable in the sense under discussion.[1]

In the recent House of Lords Case of Tolhurst *v.* Associated Portland Cement Manufacturers, already referred to, the importance of this element of reliance upon the peculiar character of the buyer was recognized. The facts of the case were in many respects similar to those of the Arkansas Valley Smelting Co. *v.* Belden Mining Co.[2] Tolhurst, the owner of chalk quarries, made a contract with the Imperial Portland Cement Company by which it was agreed that he would for fifty years supply to the company and that the company should take and buy from him at least seven hundred and fifty tons of chalk per week at a certain price to be paid monthly, and so much more, if any, as "the company shall require for the whole of their manufacture upon their said land," near the quarries. The Imperial Company afterward assigned the contract and sold its works and business to the Associated Company, whereupon Tolhurst claimed that he was not bound to perform to the assignee. As has already been said, the point that the contract was non-assignable because it provided for deliveries on credit does not appear to have been made. But it was strongly urged upon the court that the assignee had a much larger capital and business than the assignor, that it therefore would probably require much larger quantities of chalk, and that the contract had been made in contemplation of the needs of the smaller company only, and that to compel the seller to supply the needs of the larger one would be to compel him to do something very different from that which he had agreed to do. The court

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[1] See also, Wheeler *v.* Walton & Whain Co., 64 Fed. 664.

[2] 127 U. S. 379.

held the contract assignable, declaring that little emphasis should be given the words "the Company" and "their" in the contract, and pointing out that the length of the duration of the contract, the fact that there was no reliance upon personal skill or personal confidence, and the further circumstance that the buyer was induced to purchase the land and establish the works by the prospect of advantages flowing from immediate connection with Tolhurst's quarries, precluded the notion that the contract was dependent upon the continuation in business of both parties. "Very great hesitation," however, was expressed by Lord Chancellor Halsbury, and Lord Robertson entered a strong dissent.

Before leaving this class of cases, it should be noted that where the buyer engages to give a promissory note for the price of goods, he cannot assign the contract so as to compel the seller to accept the note of his assignee. The duty of giving a promissory note, unlike that of paying money, is plainly personal — the *money* of the assignee is the same as that of the assignor, but his *note* is very different.[1] For the same reason, a seller cannot delegate his duty of warranting the goods to be delivered under the contract.[2]

(*b*) *Contracts of agency.* 1. Assignment by employer. An assignment by the employer of the benefit of the service, accompanied only by a delegation of the duty of paying the employe, would appear to be unobjectionable. As has been said of the cases of sales, the payment of money is a duty the performance of which requires no particular skill nor judgment nor taste. But if the assignment purports to transfer the right to direct or control the employe's performance, as in nearly every case it must, the employe will be released.[3]

2. Assignment by employe. Whether the assignment by the employe of his right to compensation, coupled with a delegation of his duty of performance, is sustainable, depends entirely upon the character of the service required by the contract. If the employe be a servant, as distinguished from an agent, whether the performance of his duty requires skilled or common labor, he cannot make such an assignment. For "the servant's character, habits, capacity, industry, and temper, all enter into and affect the contract which the master makes, and are material and essential

[1] Rappleye *v.* Racine Seeder Co., 79 Ia. 220.

[2] Sprankle *v.* Truelove, 54 N. E. (Ind.) 461.

[3] Globe, etc., Ins. Co. *v.* Jones, 89 N. W. (Mich.) 580; Hayes *v.* Willio, 4 Daly (N. Y. C. P.) 259; Huffcut on Agency § 86; and see Lacy *v.* Getman, 119 N. Y. 109.

where the service rendered is to be personal and subject to the daily direction and choice and control of the master."[1] If he be an agent, the test is whether the performance of his duty involves the exercise of judgment, skill, taste, or discretion. If it does, the reasonable inference is that the principal relied upon his possession of the qualification, and that a vicarious performance will not satisfy the contract.[2] And perhaps it should be added, in this connection, that where some of the duties of the agent involve the exercise of discretion and others do not, the former may not be delegated while the latter may.

(*c*) *Engagements of Independent Contractors.* There are a number of interesting cases involving the right of an independent contractor to transfer both his right to compensation and his duty of performance. Indeed, the most frequently cited illustrations of non-assignable contracts are of this class — engagements to paint a portrait, to make a carriage, to write a book, *et cetera*. In most of the cases the true test — that of intention as manifested by the character of the performance required — is recognized and applied. Unfortunately the results are not always harmonious. For example, it is difficult to reconcile the two cases of Robson *v.* Drummond[3] and British Wagon Company *v.* Lea,[4] the first holding an engagement to repair and paint a carriage non-assignable, the second holding an engagement to repair railroad wagons assignable. And with reference to public printing contracts there likewise appears to be a conflict of authority, South Dakota holding them assignable and Kansas holding them non-assignable. In this instance, however, it is thought that the two cases may be distinguished. In the South Dakota case[5] the court points out that under the state law the contract must be let to the lowest responsible bidder, the only limitation being that the contract should not be let to parties outside of the state. "It will thus be seen that the question of the personal qualification of the contractor does not enter into the contract. The contract is not for the personal services of the contractor, and he may do the work through agents or assignees."

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[1] Lacy *v.* Getman, 119 N. Y. 109, at 115. See also Litka *v.* Wilcox, 39 Mich. 94.

[2] Huffcut on Agency §§ 92–94 and cases cited; also Sloan *v.* Williams, 138 Ill. 43, and Marquette *v.* Wilkinson, 78 N. W. (Mich.) 474.

[3] 2 B. & Ad. 303.

[4] L. R. 5 Q. B. D. 149.

[5] Carter *v.* State, 8 So. Dak. 153.

In the Kansas case,[1] on the other hand, there is nothing in the report to indicate that the printing was let or was required to be let to the lowest bidder, or even that bids were received. The court was justified in inferring, under such circumstances, that the contract was made with a view to the superior qualification of the contractor. For, as the court says: "Printing is an art; it is more than a mere mechanical pursuit. Given the requisite type and other appliances, some who practise it can make a printed page as pleasing to the artistic sense as a picture; while others, with the same advantages, can produce nothing that is not grievous to the judgment, eye, and taste."[2]

IV. ASSIGNMENT OF RIGHTS, DELEGATION OF DUTY, AND RENUNCIATION BY ASSIGNOR OF LIABILITY FOR FURTHER PERFORMANCE. That the *obligation* of a contract cannot be transferred without the consent of the obligee, is fundamental. "You have the right to the benefit you anticipate from the character, credit, and substance of the party with whom you contract."[3] It follows that an assignment which purports to transfer both the rights and the obligations of the contract amounts to a renunciation, and absolves the other party from further performance. This is the meaning, it is presumed, of the oft repeated, though somewhat obscure statement that "Rights arising out of contract cannot be transferred if they are coupled with liabilities,"[4] — that is to say, coupled with liabilities not in the *contract* but in the *assignment*. If the renunciation by the assignor of liability for further performance be express, the case is perfectly clear. But in the absence of express renunciation it is not easy to determine whether by "assigning" the contract it was intended to transfer its obligation or not. Since an attempt so to do would in no case be effective, and moreover would constitute a breach of the contract, it is thought that the presumption should be

[1] Campbell *v.* Comm'rs, 67 Pac. 866.

[2] See also Ellis *v.* State, 4 Ind. 1. In contracts for construction of public works, paving streets, cleaning streets, etc., the contractor is permitted to assign rights and delegate duties: Devlin *v.* The Mayor, etc., 63 N. Y. 8; City *v.* Clemens, 42 Mo. 69; Philadelphia *v.* Lockhardt, 73 Pa. St. 211; Columbia Water Co. *v.* Columbia, 5 S. C. 225; Ernst *v.* Kunkle, 5 Oh. St. 520; Taylor *v.* Palmer, 31 Cal. 240.

Other interesting independent contract cases are: Galey *v.* Melton, 172 Pa. St. 443; Mirror *v.* Galvin, 55 Mo. App. 412; Pike *v.* Waltham, 47 N. E. (Mass.) 437; Edison *v.* Bapka, 69 N. W. (Mich.) 499; Jenkins *v.* Land Co., 13 Wash. 502; Northwestern Cooperage Co. *v.* Byers, 95 N. W. (Mich.). 529.

[3] Humble *v.* Hunter, 12 Q. B. 310, at 317.

[4] Pollock on Contract (4th ed.) 425.

against such an intention, and that when the other party to the contract is notified of the assignment he may perform for the benefit of the assignee without losing his remedy against the assignor. There are many circumstances, however, which might overcome the presumption, and some of the cases holding that the rights and duties of a vendee are non-assignable may be sustained upon this ground. For example, in Hardy *v.* South Bend Iron Works[1] the facts that the assignor was a partnership and that the assignment was made upon its dissolution, might justify the inference of an intention to renounce liability for further performance. Yet such does not appear to have been a ground of decision, for the court says: "We need not discuss whether Mason [the retiring partner] would continue liable to defendant for faithful performance after dissolution of the firm. That is not in issue here." And in British Wagon Company *v.* Lea[2] the fact that at the time of the assignment the assignor company was actually in process of liquidation was not sufficient to lead the court to infer that the intent was to renounce liability. Says the court: "So long as the Parkgate Company [assignor] continues to exist, and through the British Company [assignee] continues to fulfill its obligation to keep the wagons in repair, the defendant cannot, in our opinion, be heard to say that the former company is not entitled to the performance of the contract by them, on the ground that the company had incapacitated themselves from performing their obligations under it, or that by transferring the performance thereof to others they have absolved the defendants from further performance on their part."[3]

In this connection attention must again be called to Arkansas Valley Smelting Company *v.* Belden Mining Company.[4] Here the contract was assigned twice, — first by Billings & Eilers, upon their dissolution, to Billings, and subsequently by Billings to the plaintiff. It may not be unreasonable to infer from the fact of dissolution of the partnership that the intention of the original buyers, Billings & Eilers, was to renounce liability for further performance. As to the first assignment, therefore, the defendant might well have claimed to be absolved by such renunciation. To quote the opinion of Mr. Justice Gray, the defendant "could not

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[1] 129 Mo. 222.

[2] L. R. 5 Q. B. D. 149.

[3] See also Horst *v.* Roehm, 84 Fed. 565, and Tolhurst *v.* Associated Cement Manufacturers, [1903] A. C. 414.

[4] 127 U. S. 379.

be compelled to accept the liability of any other person or corporation as a substitute for the liability of those with whom it contracted." As a matter of fact, however, the defendant chose to accept the liability of Billings, the assignee under the first assignment, and refused to perform only upon the assignment by Billings to the plaintiff. Moreover, there was no circumstance attending this second assignment which indicated an intent on the part of the assignor to renounce. It is submitted, therefore, that such an intent should not have been inferred, and that the assignment should not, upon that ground, have been condemned.

Frederic C. Woodward.

NORTHWESTERN UNIVERSITY LAW SCHOOL.